

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-222345.2 DATE: June 3, 1986
MATTER OF: Chemray Coatings Corp.--Reconsideration

DIGEST:

GAO will not reopen a protest file that was closed because the protester failed to file comments or express continued interest in the protest within 7 working days after receipt of the agency report as required by the Bid Protest Regulations. Protester's response to the contracting agency's decision on its prior agency protest may not be considered as comments on the agency's protest report to GAO because the response, submitted 24 days prior to the agency report due date, does not address the agency's detailed response to the GAO protest.

Chemray Coatings Corp. (Chemray) requests that we reopen its protest concerning the rejection of its bid as nonresponsive for failure to acknowledge a material amendment under solicitation No. 10PR-ZBS-5673 issued by the General Services Administration (GSA) for primer coatings. We dismissed the protest on May 12, 1986 because Chemray had not filed comments or a statement of continued interest in the protest within 7 working days after receipt of the agency report as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985). The regulations provide that a protester's failure to file comments, a statement requesting that the protest be decided on the existing record, or a request for extension of the period for submitting comments will result in the dismissal of the protest.

We affirm our prior dismissal.

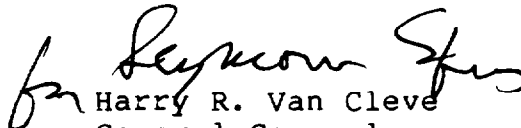
Chemray requests that our Office consider its response to GSA's decision on Chemray's prior agency protest as its comments on the agency report. The comments were submitted to this Office on April 1, which was 24 days before the due date for the agency's report.

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Initially, we point out that our protest acknowledgment notice, sent to Chemray on the day its GAO protest was filed, specifically advised Chemray of the regulatory requirement to express continued interest in the protest within 7 working days of receiving the agency report.

Absent such an expression of interest from the protester, there was no basis for this Office to determine that Chemray retained interest in the protest. Chemray's submission 24 days before the agency report merely disagreed with GSA's conclusion that the amendment was material. GSA's response to Chemray's initial protest had not explained in detail why the amendment was material. In contrast, the GSA report contained detailed legal and factual support for GSA's conclusion that Chemray's bid was properly rejected as nonresponsive. In addition, the report alleged a procedural deficiency for which the protest could be dismissed. Thus, Chemray's response to GSA's decision clearly does not take issue with GSA's position set forth in the report, and cannot be considered comments on the agency report.

Because of this, and our notice to Chemray as to the consequences of its failure to respond in some manner to the GSA report--for example, by advising us to consider its comments on the GSA decision as its comments on the GSA protest report--the prior dismissal is affirmed.


for Harry R. Van Cleve
General Counsel